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COVER OF GENERAL SESSIONS OF THE PEACE.

CITY AND COUNTY OF NEW YORK. PART V.

-----X
THE PEOPLE OF THE STATE OF NEW YORK ;:

vs.

JACOB SENDER, impleaded with

SAMUEL MILLER.

Before:

HON. THOMAS C. T. CHAIN, J.

and a jury

#3386

June 16, 1920

APPEARANCES.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY SAMUEL MARKEWICH.

FOR THE DEFENDANT: MR. CLARKE L. JORDAN.

Peter P. McLoughlin,

Official Stenographer.

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Mr. Markewich opened the case on behalf of the people as follows:

The defendant is charged with the crime of burglary in the third degree, grand larceny in the first degree and criminally receiving stolen property in the first degree. At the conclusion of the case, if we are able to establish the case beyond a reasonable doubt, after you have received the instructions of the Court upon the law you will be asked to find the defendant guilty of burglary, larceny, criminally receiving stolen goods, burglary and larceny both or criminally receiving stolen goods in the first degree.

Now, the facts are briefly these. If I should misstate any of the facts, of course, it won't be intentionally. You will judge on this case and decide it only on the testimony of the witnesses, but as I recall the facts they are as follows:

Dattelbaum Brothers, a co-partnership consisting of two brothers, Charles and Henry Dattelbaum have been engaged in the fur business in this city for a number of years. They occupied two lofts in the building, 130 W. 29th street. The eighth or ninth loft of that building. They were protected by the Holmes Protection and there was one window of one of those lofts that was unprotected. They left the place securely locked on

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the night of the 15th of April, this year. When they left the place they had approximately something over one hundred thousand dollars worth of merchandise. On the morning of the 16th of April, when they arrived at the place they found that they missed a considerable quantity of furs and they began to figure up and they found that they had lost over one hundred thousand dollars worth or approximately one hundred thousand dollars worth of furs. It looked as if the window which was not protected by the Holmes had been tampered with. They began to make inquiries and tried to find a clue to the burglary, found a piece of fur skin in the yard between 29th and 28th streets. On the next morning a man by the name of Samuels, who was engaged in the passementerie business of 127 West 28th street, immediately in the back of the premises that were occupied by Dattelbaum Brothers had arrived at his place of business and found that his place was open, found that books that were contained in the safe were underneath the safe, and found a piece of fur that did not belong in his place of business as he had no furs there, and found some paper, wrapping paper, a roll of it, and twine that did not belong in his place of business. He began to make inquiries and then ascertained that Dattelbaum Brothers had been robbed.

MR. JORDAN: I don't desire to interrupt but I ask

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that the crime stated by the District Attorney-- what some one else discovered on the morning in question be disregarded by the jury, and that they be instructed that that is no part of the opening in the case against Jacob Sender.

MR. MARKEWICH: That is quite correct, if your Honor please, I am just stating the circumstances that led to the burglary.

THE COURT: You were told so.

MR. MARKEWICH: Now, when he ascertained that Dattelbaum Brothers had been robbed a further inquiry was made, and as good fortune would have it a boy by the name of Benjamin Honig, employed, I think, as a delivery boy, for the Henshaw Floral Works who had at that time occupied the lower part of 127 West 28th street, arrived at the place at about 7.30. One of his superiors was in the place, and he saw men bringing down bundles from the upper floor -- it is only a two story building -- he did not ask these men what they were doing there but he watched these proceedings. He will tell you that he believed that the people were just sending out merchandise. About 7.30 he saw an automobile truck come in front of these premises and saw this defendant at the wheel of the truck. The machine stopped and these men began to take bundles out of the hallway and throw them

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on the truck, and they were shouting to one another "Hurry up, hurry up". And as the last bundle was placed on the truck, one of the men that threw the bundles on the truck shouted to this defendant, "Beat it". He went out of the door at a fast rate of speed. He took the name that was on the truck on a piece of paper, and he couldn't write as well as another man, his superior in the place, and he asked his superior to take the name down, and he took the name down and placed it on his desk. His superior then went to Jersey, They got in touch with him on the telephone and they found the piece of paper on his desk and they began to look for Sender. A little while later Jordan brought Sender around to the Police Department and turned him over to Officer Casasa. Now, Casasa had a conversation with the defendant, and he will tell you that the defendant told him that he was in front of these premises, that he did take a number of packages that morning and that he delivered them to a place at the corner of Columbia and Delancey street over on the east side and there dropped them on the sidewalk. He does not know when they went; he does not know who received them.

We claim that the circumstances surrounding this case, the receipt of the merchandise, the explanation that the defendant gave to the police officer -- all

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these things will tend to establish criminal knowledge in connection with the crime charged against the defendants. If we establish these facts, we will ask at your hands a verdict of guilty of the crime.

CHARLES DATTELBAUM, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 657 West 161st street.-

DIRECT EXAMINATION BY MR. MARKEWICH:

Q What is your business? A Manufacturing furrier.

Q A member of the firm of pattelbaum Brothers? A yes, sir.

Q Who are the members of that firm? A Charles Dattelbaum, that is my name, and my brother, Henry pattelbaum.

Q A co-partnership? A yes, sir.

Q In business how long? A 18 years.

Q How long have you been at 130 West 29th street in this county? A Three years last February.

Q On the evening of the 16th of April, 1920, did you have a stock of furs in your place of business? A Yes, sir.

Q What furs did you have there? A Skins and manufactured furs consisting of coats, scarfs, muffs and a lot of skins.

Q Approximately what was the reasonable market value of the merchandise that you had in stock at that time? A About \$200,000.

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Q How many lofts did you occupy in that building?

A Two.

Q What were they? A The 8th and the 9th.

Q Large lofts? A 40 by 90, something like 40 by 90.

Q What was the height of the building? A 12 stories.

Q And elevator building? A Yes, sir.

Q How many elevators did you have? A One passenger and one freight.

Q Were you protected by the so-called Holmes Protective Agency? A Part of the loft, but not the entire loft.

Q Wired? A Some of the windows were wired.

Q What windows were not wired? A The fourth window on the fire escape was not wired, running back with the rest of the windows which were not wired.

Q You mean the front, that part facing 29th street? A No, sir; the rear.

Q What time in the night did you leave your place of business? A About 6.10, between 6 and 6.10.

Q Were you the last person to leave the loft? A My brother and I.

Q You locked the premises? A Yes, sir.

Q Did you, before leaving the place, examine the windows to see if they were fully locked? A We had to have Holmes give us the signal that everything is all right-- you can't leave before that.

Q You got the signal? A You got to ring their bell,

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and if they give you an answer that everything is O.K. you leave; otherwise you cannot leave the place.

Q You got such a signal? A Yes, sir.

Q After you got such a signal you left? A Yes, sir.

Q Now what time did you arrive at the premises the next morning? A About 8.30.

Q When you arrived there what did you find? A I found that the place was all upset, and looked empty to me; it looked practically empty and the appearance, wherever I turned, I saw empty racks.

Q Did you look around to see what property, if any, was missing? A Yes, sir, I saw -- I looked around and I saw a great deal of property missing, and the first thing I did was to telephone to the Police department.

Q Now, tell the gentlemen of the jury what property you found missing? A You want me to describe the property?

Q Yes, what was it? A It consisted a 1,051 mink skins; that as as near as I can give; I got a list but I didn't bring it along, Mr. Markewich. Some 1050 were mink skins, 100 baum marten skins.

Q By the way you are familiar with the reasonable market value of such property? A Yes, sir.

Q What was the reasonable market value of that property? A 1051 mink skins at \$20 a peice, that is what we paid for them in St. Louis; 100 baum marten skins at \$45 a piece. One hundred and some odd -- I cannot give you the

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exact number -- of stone marten skins of the value of \$40 a piece. Over one hundred Hudson Bays from the value of eighty to one hundred dollars a piece; about 300 skunk skins of the value of \$9 a piece. Two raw silver fox skins of the value of \$100 a piece. 32 Hudson seal coats averaging about \$350 a piece. 2 seal dyed otter coats of the value of about \$400 a piece, one mole^{rat} skin coat about \$800 for the one, a beaver coat of the value of about \$600, a Russian Fitch skins about \$200 -- of the value of about \$9 a piece. I can't remember any more of that, but I have got the list and so have the police.

Q Approximately what was the value? A Approximately the value was between \$50,000 and \$100,000.

Q By the way did you carry any burglary insurance?

A About \$5,000.

Q What did you do when you discovered the loss of that property? A I had telephoned to the police department of the 30th street station and Police Headquarters.

Q And the police officer arrived? A Yes, sir.

Q Now, did you see Mr. Samuels that morning? A He came up to see me, yes, sir.

MR. MARKWICH: I refer to Abraham Samuels.

Q What did he do in your place? A Why he told me--

Q Never mind what he told you. Did he have any property with him? A Yes, sir.

Q What did he have? A A fur scarf.

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Q Was that one of the scarfs-- A One of the scarfs belonging to me.

Q That you found missing? A Yes, sir.

BY THE COURT:

Q Whom do you say that is? A Mr. Samuels.

BY MR. MARKEWICH:

Q What did you next do? A Why I took --

Q Did you go up to Mr. Samuels' place? A Yes, sir.

Q What did you find in Mr. Samuels' place? A Paper and twine belonging to us.

Q Where is Mr. Samuels' place? A It is in the rear of our place on 28th street while we are on 29th street.

Q 127 West 28th street? A Yes, sir, it is in a building about one or two stories.

Q What part of that did Mr. Samuels occupy? A The upper part.

Q The top floor? A Yes, sir.

Q The second floor? A Yes, sir.

Q You say you found your twine and wrapping paper?

A Yes, sir.

Q Did you look in the yard between 28th and 29th streets?

A I did not do that, but the detectives did.

Q Now, what next did you do? A Well, detectives were assigned to the case, and we hired private detectives besides to try to discover it.

Q You have not discovered any of the property? A No,

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sirsir, we have not discovered any of the property.

CROSS EXAMINATION BY MR. JORDAN:

Q About the paper and twine that you found in Samuels place, how do you identify that as yours? A Well, it is that paper, we were missing the paper and the twine from our wrapping room, and it was found in Samuels place, and he says, "Is that your paper", and I said, "Yes, that is the paper and twine missing from my shipping room."

Q It was the same kind of paper you have, no identifying mark? A But Mr. Samuels said he had no such paper.

Q From the information you had gotten convinced you it was yours? A Yes, sir.

BY MR. MARKWICH:

Q Did you when you entered the premises and ascertained the loss of considerable property examine the premises the doors and windows? A I did in my own place.

Q In your own premises? A Yes, sir, I examined the place, and in connection with some detectives we found one of those windows was forced open.

Q When you say forced open what do you mean, just tell us? A Well, I mean--

Q Describe the condition of the windows? A The condition of the windows were such that in closing the window-- it isn't the kind of window that are here-- the kind of windows that open outside, both ways, out and in, and the hook that keeps the window closed was dented as though it

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was forced open, and it having been pointed out to me, the marks on the fire escape and on the windowsill?-

MR. JORDAN: I move to strike that out.

THE COURT: The jury will disregard it.

Q You found the window open? A That is a thing I couldn't say whether the window was open or not; I was too excited at that moment to notice that.

Q You say the hook was bent? A Yes, sir.

Q Did you find any other marks on that window? A No.

Q You say you found marks where? A On the windowsill.

Q On the windowsill? A Yes, sir.

BY MR. JORDAN:

Q Now, just one more question, Mr. Dattelbaum, was the place open or closed, when you got there? A The place was open when I got there because one of the boys opened the place usually about a quarter of eight.

Q You don't know whether when the first of your employees got there -- do you know whether it was open or closed? A I didn't get that, sir.

Q Do you know whether the place was opened or closed when your first employee went there?

THE COURT: We will take it for granted that he does not know as he was not there at the time. We will take a recess now, gentlemen of the jury. You are admonished not to converse among yourselves on any subject connected with the trial and not to form or express

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any opinion thereon until the same is submitted to you.

)The Court took a recess until 2 p.m.)

AFTER RECESS 2 p.m.

A BRAHAM I. SAMUELS, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKEWICH:

(The witness stateshe lives at 936 Mott avenue, bronx.)

Q Are you engaged in the passemneterie business at 127 West 28th street? A Yes, sir.

Q How long are you engaged in business at that place?

A I have been there about three years.

Q Passemneteri or embroidery? A Yes, sir, passemen-
terie and ornaments.

Q Now, what is the height of the building? A It is a two story building, two stories.

Q What floor did you occupy? A The upper floor.

Q On the morning of the 16th of April, 1920, did you go to your place of business? A yes, sir.

Q What time? A About 11.30.

Q What did you find in your place of buisness? A I went over to the safeand I looked --

MR. JORAN: I object to that on the ground that it is not connected with the defendant, and it is incompetent, immaterial and irrelevant.

THE COURT: I will receive it subject to connection

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THE WITNESS: I went over to the safe-- opened the outer door which we always left open, and looked for the ledger and other books which were in the safe, and I could not find them. I then asked Mr. Samuels--

THE COURT: Strike that out.

THE WITNESS: (Continuing) I noticed that the inner lock on the safe, which was locked, when I left the premises was broken open, and searching for the books I found them underneath the safe, and I then knew that somebody --

Q Never mind that. At any rate you looked about the premises? A Yes, sir.

Q As far as you knew there wasn't any stuff missing in your place? A No, sir; no stuff missing.

Q You only had embroidery there? A Well, we had some silk on spools that was not worth very much.

Q Did you find this in your place of business? A Yes, sir

MR. MARKEWICH: I offer it in evidence.

(Referring to a fur scarf.)

(Admitted and marked People's Exhibit 1.)

Q Where did you find it? A On the floor.

Q Did you find a roll of this paper (referring to paper produced in the court room) A I did.

Q Where did you find that? A I found that in the back of the loft.

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Q Did you also find this rope or twine? A Yes, sir.

MR. MARKEWICH: I offer that for identification.

(The rope referred to is marked People's Exhibit
2 for identification.)

Q Now did this paper, the twine and this scarf belong
at your premises? A No, sir.

Q Now what did you do when you found this in your pos-
session? A I went downstairs to the florist.

Q You talked to some one there? A Yes, sir, I spoke
to some one there.

Q To whom, do you recall to whom? A I think it was the
assistant manager there, and I told him that --

Q You spoke to him? A Yes, sir.

Q After you spoke to him what did you do. Did you
have this with you? (Referring to the scarf as People's Exhibit

1) A I did not have that, no, sir.

MR. JORDAN: I object to that question.

THE COURT: I will allow him to answer.

Q What did you do after you had spoken to him and he
had spoken to you. Did you go anywhere? A Yes, sir.

Q Where? A To Dattelbaums.

Q Did you see Mr. Dattelbaum? A Yes, sir.

Q Was he the one who was on the witness stand before?

A Yes, sir.

Q You had spoken to him? A Yes, sir. I did.

Q Did you show him this scarf? A We came over to my

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place and I showed him the scarf.

Q When you spoke to him he came over to your place?

A Yes, sir, when he came over to my place I showed him the scarf I found.

Q What time did he come to your place? A About 12.30 around that time.

Q You saw this scarf-- did you show him the scarf?

A Yes, sir.

Q In your place? A Yes, sir.

Q And the paper and the twine? A Yes, sir.

CROSS EXAMINATION BY MR. JORDAN:

Q What is the number of your place? A 127 West 28th street.

Q Where is that with reference to Mr. Dattelbaum's place? A It is in the rear of Dattelbaum's place.

Q How many men have you in your employ? A One.

Q Now what time did you leave your place of business on the 15th of April? A About 5 o'clock.

Q When you came in the morning of the 16th of April to your place of business, did you observe the condition of the locks and doors? A Yes, sir.

Q The outer door the one that leads to the loft, what lock did you have on that door? A A Yale lock.

Q The day before? A Yes, sir.

Q What was the condition of the lock when you left the place?

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MR. JORDAN: I object to that as immaterial.

THE COURT: Objection overruled. I will receive it, subject to connection.

MR. JORDAN: I also object to it as not binding upon the defendant.

Exception.

Q What was the condition of the lock when you left the place on the 15th of April? A Good condition.

Q What was the condition of it on the 16th of April?

Same objection.

Objection overruled. Exception.

A A little bit chopped off where you insert the key.

CHARLES DATTILBAUM, the complaining witness, resumes the stand.

BY MR. MARKWICH:

Q I show you this scarf, marked people's exhibit 1 for identification, and I ask you whether you recognize this?

A Yes, sir.

Q Is that part of the property that you had missed?

A Yes, sir.

Q When you came back that morning? A yes, sir.

Q Where did you find that? A In Mr. Samuels' place on 8th street.

MR. MARKWICH: I offer it in evidence.

(Received and marked people's exhibit 1.)

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Q Did you find a roll of paper in Mr. Samuels' place?
of which this is a part and this piece of rope? A Yes, sir.

Q Ortwine? A Yes, sir.

Q How much, a roll of it? A A small roll of twine.

(The paper referred to and the twine marked People's Exhibit 2.)

Q Did you recognize them? A Yes, sir.

Q Can you state whether it came from your premises?
A yes, sir, it came from our premises, the paper we used
and
for wrapping sending out packages.

MR. JORDAN: I object to that.

Objection overruled. Exception.

(Marked People's Exhibit 2 in evidence.)

Q I show you this scarf of unfinished skin and ask you
whether you recognize this? A yes, sir.

Q Where was this found? A Out into the yard, in the
rear yard.

Objected to; objection sustained.

Q Were you present when it was found? A No, sir.

Q Is this your scarf? A yes, sir.

Q Your skin? A Yes, sir.

MR. MARKEWICH: I offer it for identification.

(The scarf referred to is marked People's Exhibit
3 for identification.)

Q What identification is there on this paper and twine
that causes you to testify that it came from your place?

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A Because it is the same paper and the same shade of paper we have been using for years, and the fact that they took one roll of paper and cord from out of the factory and I found it there.

Q But you know there is a lot of paper of the same kind and quality? A I have no doubt about that.

Q Used by a great many people? A Yes, sir, no doubt about that.

Q There is no mark of any kind or character by which you can identify it? A No, sir; we use the very same paper.

Q Or any kind of a description that enables you to identify it as yours? A No, sir.

Q Now on the twine? A No, sir.

THE COURT: I think I will receive it merely as being something similar to property used by the complaining witness as he found in this other man's place.

Q Were there any marks of identification on People's Exhibit 3? A yes, sir.

Q Now tell us. A At the head there, the perforation.

Q No handwriting or anything around it? A No, sir, you cannot write on skin by hand; there is a stamp that perforates.

Q You don't mean you cannot write on skins? A Well, we never do.

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Q You don't mean that you can't? A Well, it has never been done.

Q Don't tell us that. Now, Mr. Dattelbaum, what are the perforations? A The perforations at the head there are sometimes very-- after the skins are being dressed the perforations comes off, but from the cuts at the head there is positive identification.

Q The perforations that you made are not always made alike? A Yes, sir, but not always so distinct after the skins are dressed, and therefore these express cuts are put in and they are always very distinct.

Q These two cuts? A Yes, sir.

Q What are the dimensions of those cuts, how long are they? A They are one-eighth or a quarter of an inch, something like that.

Q Wouldn't it make any difference whether the perforations were a quarter of an inch or a half an inch or an eighth of an inch in your identifying your own work? A Yes, sir, it would.

Q Now what are they? A About a quarter of an inch.

Q Aren't they over a quarter of an inch? A Well, they might be; I never measured them.

Q So then you don't know whether you put them in or not? A Yes, sir, I know I put them in.

Q Now, Mr. Dattelbaum you cannot recognize them unless you know what they are, can you? A Of course, I wouldn't

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recognize them--

Q Haven't you seen other skins with perforations?

A Yes, sir, but not the same perforations.

Q Now what is the difference between the perforations that you put on yours, and the perforations you had seen on others? A There are thousands of different makes of skins and how do you suppose skins can be recognized?

BY THE COURT:

Q Have you a distinct mark? A Yes, sir.

BY MR. JORDAN:

Q This particular man who makes the perforations?

A Yes, sir.

Q Working for your firm alone? A Working for our firm alone.

Q Now but you cannot tell us how wide apart these perforations were? A I can bring you the stamp down here, if you want it. I have not measured that stamp.

Q I am asking you now for the purpose of seeing whether you are able to recognize the perforations so that the jury who have got to determine this case may know -- can you tell us how wide those perforations are about? A I cannot unless I have the stamp-- bring the stamp down and show you the stamp.

Q Then you cannot tell us? A I did tell it at that time, compared and saw it was ours.

Q Did you make the comparison with the stamp at that

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time? A Yes, sir.

Q Now where is the stamp on Exhibit 1? A If you rip that head open you will find the stamp.

Q Did you rip it open? A No, sir, I recognized it with one of our scarfs. We made hundreds of them, thousands of them.

Q Well, was there any mark on that to tell you ?

A Yes, sir, looking on the scarf I know it is one of our skins, our pattern and our work; we made thousands of these scarfs, you know, similar fur.

Q Did you ever sell any of them? A A great many of them.

Q How many did you sell? A Hundreds and hundreds of them, I could not tell you exactly.

Q ^{Just} Looks/like that? A Yes, sir, from the same stock, it looked like this.

Q So nearly alike you could hardly tell them apart?

A So near alike -- well some are of finer quality and some inferior grades, a little shorter or a little longer.

Q How many did you sell prior to this time that looked like this? A Just exactly like this a number of them.

Q If there had been the same mark on them you couldn't very well tell whether this was one that was in there on the night of the 15th or one that you had before that time sold, could you? A I didn't get that.

BY THE COURT:

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Q How can you tell that this was not one that you had sold before the 15th of April? A I couldn't tell that, your Honor.

Q You couldn't tell that? A No, sir.

Q It might have been one that you sold? A Yes, sir, how could I find it if it was sold?

Q What you say is that you recognize it as being something that at one time you had owned? A On the night before it was in our place.

BY MR. JORDAN:

Q You think it was in your place because it looks like one that you had? A Yes, sir.

Q Isn't that what you meant to say to this jury-- you might have sold it or some might have been taken out a month or sometime before and left it at another store or might have stolen it and taken it from some other place? A Yes, but that isn't the idea I don't see how that comes in.

Q You don't believe it is so, but you cannot be positive that it is not so, can you? A I cannot.

THE COURT: That is a matter of argument.

BY MR. MARKIEWICH:

Q You did not sell any to Mr. Samuels? A No, sir.

Q You didn't throw any out in the yard? A No, sir, it cost ninety dollars a piece; I don't throw them away.

Q You don't know who did throw it away, do you? (No answer)
BENJAMIN HONIG, a witness called on behalf of the People, being duly sworn, testified as follows:

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(The witness states he lives at 373 S. First Street, Brooklyn.)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q How old are you? A Twenty years.

Q What is your occupation? A Errand boy in a florist.

Q How long are you working in that place? A Four and a half years.

Q What is the name? A The Henshaw Floral Company.

Q Were you working for anybody before that time? A Yes, sir.

Q By the way during the time that you worked for the Henshaw Floral Company did you go across to France? A Yes, sir.

Q As what? A As a private in the United States Army.

Q During the recent war? A Yes, sir.

Q How long were you over there? A I was over there sixteen months.

Q When did you come back? A I came back August 29th, 1919.

Q Now where was the place of business of the Henshaw Floral Works? A 127 West 28th street.

Q On the morning of the 16th of April, 1920, did you go to Henshaw's place to work? A Yes, sir.

Q What time did you arrive there? A I arrived there 25 minutes past seven.

Q At the usual time for you to arrive at the place? A Yes, sir.

Q Do you know, by the way, when Mr. Samuel's place usually opens? A Yes, sir.

Q What time? A Eight o'clock.

Q When you came to the place of business -- by the way

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you occupy the lower part of the building? A Yes, sir.

Q Did you occupy the lower part of the building? A Yes, sir.

Q Now when you came to the place of business did you notice any men around there? A No, sir, I didn't notice nothing just then. At half past seven I noticed a truck -- came in front of the building.

Q About five minutes after you arrived? A Yes, sir, about five minutes after I arrived.

Q A truck came to the front of the building? A Yes, sir, in front of 127.

Q Was there anything about the truck that attracted your attention? A Yes, sir, the gas was on and the door --

Q The gas in the engine? A Yes, sir, the engine was going.

Q The engine was running or going? A Yes, sir.

Q The car was at a standstill? A Yes, sir, standing in front of 127 West 28th street.

Q Did you see who was at the wheel? A Yes, sir.

Q Who? A Jacob Sender.

Q That is the defendant at the bar? A Yes, sir.

Q Did you see any other men around there? A Yes, sir, one out in the gutter and one on the sidewalk.

Q Did you see where those men came from? A No, sir.

Q Did you see what the men did? A Yes, sir.

Q What did they do? A As soon as the door swung open from Samuel's place packages started to come out but at first --

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Q What was the size of the packages? A Around five feet by three.

Q Did you notice how they were wrapped? A Yes, sir.

Q What paper? A Brown paper and that colored cord there (indicating.)

Q I show you this paper, like this? A Yes, sir (referring to People's Exhibit No. 3.)

Q And cord like this? A Yes, sir.

Q How many packages did you see taken out of there? A Between ten and fifteen. I just didn't take exact count, sir, but between ten and fifteen packages.

A

Q What was done with the packages? A As they were thrown out into Sender's truck.

Q By these men? A Yes, sir, by them two men.

Q Where was Sender all the time? A He was at the wheel.

Q Now after that what did these men do? A After the truck was loaded the fellow out in the gutter wanted to know -- he says, "Beat it" and walked away.

Q To who? A Sender. Then the two went -- each walked in different directions, one man walked to 6th avenue and the other man to 7th avenue.

Q And Sender started the truck? A Yes, sir.

Q Did he start off slowly? A Started off slowly and as soon as he got in the middle of the block he just went on right ahead.

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Q Now did you notice the name that was on the wagon?

A Yes, sir.

Q What name was it written on the wagon? A J. Sender's, I just don't remember the address but I put it on a piece of paper, I wrote it out; it was in yellow letters.

Q Who wrote it down? A Mr. Joe Hyman of the Henshaw Floral Company.

Q He was your superior in the company? A Yes, sir.

Q He wrote the name down in your presence? A Yes, sir, in my presence and in the presence of another man also.

Q Do you know what he did with that piece of paper? A Well he gave it to me and I just happened to put it on the table and when I put it on the table when it occurred and he didn't see me until around 12 o'clock.

Q Who came in to see you? A Officer Chiquette and Mr. Samuels.

Q You gave them the slip of paper? A Yes, sir, that was what the manager --

Q To the manager? A Yes, sir.

Q After that did you see Sender again? A The only time I seen him was in the lineup.

Q Where? A In the Police Department down in 30th street.

Q Where? A Down at the Jefferson Market Court.

Q Are you sure now that this is the defendant? A Yes, sir.

Q Did you say that Hyman also wrote down the name? A No, sir, I asked him to do it; I told him it doesn't look quite

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clear.

Q You asked him to do it? A Yes, sir.

Q The name and the address? A Yes, sir.

CROSS EXAMINATION BY MR. JORDAN:

Q I understood you to say that you didn't see the address very well, didn't you say that a minute ago? A I don't remember the address I said.

Q But you say that you put it down? A Yes, sir.

Q How long after the truck went away did you put it down?

A I put it down while the truck was there.

Q Who put it down when the truck was there? A Mr. Joe Hyman of the Henshaw Floral Company.

Q Now where was the truck or where were you when you put it down? A I was right at the table where Mr. Hyman was writing it down.

Q That was inside? A Yes, sir, that was inside.

Q While the truck was still out there? A Yes, sir.

Q You told him to put down the address? A Yes, sir, I told him to put down the address and the name.

Q Quite sure of that? A Yes, sir.

Q How long was the truck there? A Between twelve and thirteen minutes.

Q It took some time for them to put these goods on? A Well it wasn't many packages; they hurried off; about ten or fifteen packages; it didn't take long to do it.

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Q Did they bring them down from the shop there or were they on the sidewalk? A They were in Mr. Samuels' and going down stairs -- one flight of stairs and they took them out.

Q What was the first thing you saw in reference to the truck? What did you first see? A The door flung open at half past seven and then packages were coming out and knowing Mr. Samuels didn't have such stuff --

Q Now I didn't ask you about anything you knew about Mr. Samuels. I am talking now about the truck and the packages. When the door opened and the packages were being brought out was the truck standing in front of the place? A Yes, sir, in front of 127.

Q Now how long had it been standing there when those packages began to come out? A Twelve or thirteen minutes.

Q It had been standing there for twelve or thirteen minutes? A While the packages were coming out of the door.

Q Let us see if we can understand each other. When that door was flung open, as you say, the packages began to come out? A Yes, sir.

Q The truck was standing out there, was it? A I just happened to see it come right along.

Q It just stopped there? A Yes, sir.

Q It didn't stay there twelve or thirteen minutes? A No, sir.

Q What I mean is from the time it got there was there twelve or thirteen minutes before it went away again? A Yes, sir.

Q Now did this defendant or the man at the wheel load any

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packages in? A No, sir; he was at the wheel.

Q He stood right still at the wheel? A Yes, sir, at the wheel.

Q Did you see him when he drove up? A Yes, sir.

Q Where were you when he drove up? A Right in front of the door taking my coat off.

Q Well what was the direction it was coming from? A Looking out for a moment I saw the truck pull up and I just stood there.

Q What I want to know is did he get there and stop before the door opened or did he get there just after the door opened? A He got there before the door opened and the door flung open and I noticed something was on.

Q Won't you leave that out. A Because the door opened then.

Q You saw the door open? A Yes, sir.

Q Now just tell how it was opened. You say flung open, how was it opened? A Well you open it up on the side.

Q Well was it opened up from the inside any different from any door that you open from the inside? A Well the lock was on the inside.

Q I understand. Was it opened/any different from what it ordinarily would be opened? A No --

Q What did you mean by saying the door was flung open? A Well it was opened up then.

Q You do not mean to convey to the jury that it was flung open in some peculiar manner outside of the ordinary way? A It

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was opened up in a hurry to get out quick.

Q How do you know? A I was standing there.

Q You say opened up in a hurry? A Yes, sir.

Q How do you know? A I was standing there; I was in front of my door there.

Q Now was it opened any different from what it usually is?

A When I seen Samuels' man coming there he never opened the door that way.

Q It was different? A Yes, sir.

Q You said a moment ago

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Q Do you swear there were ten men in that lineup, young men? A Well, I don't remember if there were, it is so long.

Q Don't you remember that? A No, sir, not so long.

Q It isn't as long ago as the time you saw all this you are telling about? A It wasn't so long ago as that.

Q It wasn't so long ago but what you can remember it, was it? A What is that? Repeat that again.

Q It wasn't so long ago that you were down looking at that lineup and you can't remember? A It was about a month ago.

Q I know but you were telling us of five or six weeks ago, wasn't it; the other things you have been telling us is longer ago?

A Yes, sir.

Q Now your memory is not good any longer in regard to this lineup as it is with regard to the other? A I didn't take the count of the men that was there.

Q You were not interested in that, is that it? A Yes, sir.

Q You went in there for the purpose of seeing if you could pick out the man you saw on that car? A Yes, sir.

Q Well you were interested in a sense, weren't you? A Yes, sir.

Q The officers who were there brought in some men and put them in a line, didn't they? A Yes, sir.

Q And you were brought in and asked to look them over carefully, weren't you? A Yes, sir.

Q Did you do it? A Well, I went in there.

Q Now you will answer the question please. Did you do it?

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A I said no before I did not.

Q Did you look them over carefully? A Yes, sir.

Q Looked them over carefully? A Yes, sir.

Q Were you asked by the Captain in charge if the man was in that line that you saw in that car — weren't you? A Yes, sir.

Q And you looked and turned to the Captain and said no, didn't you? A Yes, sir.

Q He isn't there? A No answer.

Q Now didn't the Captain say to you, "Look again"? A Yes, sir.

Q Didn't he have all the men take their hats off? A Yes, sir.

Q And didn't ^{he} have them turn their faces in different directions? A Yes, sir.

Q Didn't he say, "Can't you see him here", did he say that?
A Yes, sir.

Q And didn't you say, "No, he is not here"? A Yes, sir.

Q "He is not here"? A Yes, sir.

Q And didn't he say to you, "Now look again. I don't want to go into the front room. See if you can recognize him." Did he say anything of that kind? A Yes, sir.

Q Say something of that kind? A Yes, sir.

Q Didn't you look again and say, "He is not here"? A Yes, sir.

Q I will ask you the questions all right. Then we all went downstairs where the defendant was taken and something was done, some questions were put to him by a sergeant or some other officer there? A Yes sir.

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Q You were down there, weren't you? A Yes, sir.

Q You came in with an officer and did you say then that you could recognize him? A Yes, sir.

Q Did I ask you why you didn't do it before? A Yes, sir.

Q Did you tell me you were afraid? A Yes, sir.

Q Now who were you afraid of? A Afraid of fellows hanging out on the East Side.

Q Afraid of fellows hanging out on the East Side? A Afraid he would say to the fellows that was in it with him--

Q What were you afraid of? A I was afraid of the fellows, the gang.

Q What fellows? A The gang that was after me.

Q What gang? A I don't know what gang.

Q Of course you have been in the army; is there any person in the world you are afraid of? A Well I aint no gangster or fighter.

Q Don't get away from that. Can you tell this jury of any person that you were afraid of that day when you came back and said that you did recognize him but were afraid? A I was afraid to tell because if I would go and tell right there the only thing was I didn't wish to right there as the men on the East Side would be after me.

Q You were over in France? A Yes, sir.

Q Were you in the actual fighting in France you mean? A Yes, sir.

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Q And you tell this Court and jury you were afraid? A Yes, sir.

Q Did you ever see the defendant before that day? A What defendant?

Q This defendant right here. Did you ever see him before that day you saw him? A No, sir.

Q With the truck? A No, sir.

Q Did you ever see him with any person before that time?
A No, sir.

Q Did you know the persons who were loading the things into the truck? A No, sir.

Q Did you ever see them together before? A No, sir.

Q Did you ever know that anyone of them belonged to the same gang that this man did? A No, sir.

Q Answer my question. You didn't know a thing about any gang that he belonged to, did you? A No, sir.

Q You didn't know whether he belonged to any gang, did you?
A No, sir.

Q Now how long was it after you told the officers that you could not identify this man, that he was not the man you saw on the truck -- how long was it before you came down stairs and said that you did identify him? A I went into the Captain first and the Captain brought me down.

Q Won't you answer the question? A No answer.

BY THE COURT:

Q How much time passed between the time when you could not

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identify him and the time when you did identify him? A Well about 15 minutes, sir.

BY MR. JORDAN:

Q Was it as long as that? A Yes, sir, I was upstairs with the Captain, sir, speaking.

Q I didn't ask you that. I asked you if it was as long as that -- can't you answer that question -- was it as long as fifteen minutes? A Yes, sir.

Q Who was the first one that spoke to you after you went out of the room where the lineup had occurred? A After I got out of the office the Captain came in to me.

Q Won't you answer the question. Who was the first person that spoke to you after you went out of that room? A The Captain.

Q You mean that? A The Captain.

Q Do you mean that, sir? A Yes, sir.

Q That nobody spoke to you before the Captain did? A No, sir.

Q Where did he speak to you? A Right outside.

Q Didn't you go into the hall after the rest of us went downstairs? A Yes, sir, I was sitting upstairs and nobody didn't speak to me.

Q Didn't you go out of that hallway before the rest of us went downstairs? A No, sir, I was in the office; I could not get out.

Q Now it was right up in the Commissioner's office there, didn't you go out? A Officer Doyle gave orders not to speak to nobody.

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Q Didn't you go out of that office before the defendant and the rest of us went out? A Yes, sir.

Q Where did you go? A I was sitting on a chair in the office, the next room from the Captain.

Q In the outer office? A Yes, sir.

Q Do you mean to say, sir, you were there when the defendant and Mr. Cassasa and several of us went downstairs? A He was right by me, yes, sir.

Q You were sitting there? A Yes, sir, on a chair.

Q How who was the first one that said a word to you, no matter what it was, that spoke to you after you went out from the room where the lineup was? A Officer Doyle.

Q The first one? A Yes, sir.

Q Weren't you told before you went in there that they wanted you to identify the man who was on the truck, to see if you could pick him out? A Yes, sir.

Q Didn't they tell you that you were not in any danger? A No, sir, they hadn't said a word against me.

Q Nobody said a word? A No, sir.

Q Now then the fact of it is that just as soon as the Captain told you that you were not in any danger, told you you would be protected you were willing to tell the truth, is that it? A Yes, sir.

Q You mean you had lied before, did you? A I lied but I did not recognize him.

Q You knew you were lying when you repeated that several

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times? A Yes, sir.

Q And you intended to lie to the officers and everybody connected with it? A Yes, sir.

Q Now had you talked it over with anybody about identifying the defendant? A No, sir.

Q Before you got up there? A No, sir.

Q You did not? A No, sir.

Q How did you come to go there? A Well the officers came after me to the place where I was working at.

Q Had you told him before that you saw the man at the wheel that you could recognize? A I told Detective Drury and Detective Doyle.

Q When did you tell them that? A When I was at the garage with them, April 17th or 18th.

Q That was some time before you saw the defendant? A Yes, sir.

Q You told them you could identify him? A Yes, sir.

Q Now did anything occur between the time that you told those detectives that you could identify the man that you saw to scare you -- anything between the time that you told them and the time that you went down to the line-up, anything occur to scare you? A I told them I was scared to tell who it was; I told him I would point him out on the slish. And Drury said, "Don't be afraid and I says I won't take no chances, I told him I would point him out on the slish."

Q Did they tell you you should point him out in the lineup?
A Yes.

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Q So when you went in there you intended to lie about it?

A Yes, sir, I went in there and I wouldn't say anything there.

Q You went in there with the intention of lying about it?

A Yes, sir.

Q Who did you tell that to? A I didn't tell that to anybody.

Q Didn't tell that you were lying about it? A No, sir.

Q Did you tell them that you would tell the truth? A I told them I would tell the truth.

Q Now when did you tell them you would tell the truth?

A When I got in there Officer Doyle says to me, "Make sure you are getting the right man" and I said yes and when I got inside I got red in the face and I could not hardly see at first.

Q Is that right? A Yes, sir.

Q You, a soldier, got red in the face and scared? A Yes, sir.

Q Just because you were scared to tell whether you had seen the man on the truck? A Yes, sir.

Q You got red in the face and scared? A Yes, sir; I had my eyes on the defendant all the time I was in the Captain's room.

Q Did you? A Yes, sir.

Q Still with your eyes on him all the time you deliberately lied to these men because you were afraid of something, you don't know what it was? A Yes, sir.

Q How much money have you been paid in this thing? A I haven't been paid a cent.

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Q Not a cent? A No, sir; I have been lending it from friends, I haven't been paid from --

Q You have not been paid or promised anything? A No, sir.

Q You are quite sure about that? A Yes, sir, sure of that.

Q Now when you said that you could not pick out the man didn't I say right there, in your presence, "There isn't any question about it. This is the man that was on the truck." Didn't I say that right there? A Give that again, sir.

Q Repeated -- "This is the man that was on the truck" didn't I say that? A Yes, sir.

Q Still you were afraid to identify him? A Yes, sir.

REDIRECT EXAMINATION BY MR. MARKEWICH:

Q Did you go around with the detectives, Doyle, Drury and Chiquette? A With Officers Drury and Officer Chiquette I went around.

Q You were brought in to the defendant's home? A Yes, sir.

Q You were brought to a garage where the defendant had been?
A I went up to the garages.

Q Where the defendant was supposed to have a car? A Yes, sir, supposed to have a car; he said that he didn't have any in there.

Q Now had you met some people who were friends of the defendant?

Objected to. Objection sustained.

EDWARD F. DOYLE, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is a Police Officer attached to the

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23rd Precinct.)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q How long have you been connected with the Police Department of this City? A Nine years.

Q Connected with the Central Branch known as the Loft Squad?
A No, sir, the Detectives' Bureau of the 23rd Precinct.

Q On the 16th, of April, 1920, did you go to Dattlebaum's place of business? A I did, sir.

Q 130 West 29th street? A 130 West 29th.

Q Did you have a talk with Mr. Dattlebaum? A I did, sir.

Q Charles? A Yes, sir.

Q After a talk with him did you examine the premises? A I did, sir.

Q Did you examine the windows? A I did, sir.

Q What did you find as far as the windows were concerned? A On the second window from the fire escape --

Q What floor? A The ninth floor. The second window from the fire escape, the fourth window in the rear of the building, I noticed that the window was slightly marked, that is it had marks of identification of some kind of an instrument apparently a jimmy -- I called Mr. Dattelbaum's attention to it after the time.

THE COURT: Don't you think we can shorten the trial somewhat. I imagine there is no contest in this case as to the burglary.

MR. JORDAN: None. We take it for granted.

THE COURT: You simply claim that the defendant had no

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of it
knowledge/or part in it?

MR. JORDAN: No knowledge or part in it. We make no contention that there was not a burglary, a dastardly thing and outrageous. We take it for granted that the property was taken.

THE COURT: I do not think you need spend time, Mr. District Attorney, on proving the burglary.

MR. MARKEWICH: All right, your Honor. It will be conceded that there was a burglary and that property was taken in excess of \$500 in value. I want to ask a few questions of the Officer further.

BY MR. MARKEWICH:

Q Did you find these instruments? A Yes, sir.

Q On what part of the premises? A I did in the lower hall which looked out to a back fire escape, that is the lower hallway on the main floor which leads out to the back yard.

Q What are these instruments known as? A Jimmies, burglars' instruments used for prying open windows and doors.

Q Did you find --

MR. JORDAN: I have conceded the burglary and therefore I shall not object to this characterization.

Q Where did you find this, People's Exhibit 3? A In the yard of 127 West 29th street.

MR. MARKEWICH: I offer it in evidence.

(Marked People's Exhibit 3.)

(At this point the Court admonished the jury calling

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their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until tomorrow morning June 17th, 1920.

New York, June 17, 1920.

TRIAL RESUMED.

EDWARD F. DOYLE, a witness for the People, resumes the stand.

DIRECT EXAMINATION (Continued) BY MR. MARKEWICH:

Q You left off yesterday by telling us that you found that fur skin in the yard? A Yes, sir.

Q And did you also find some rope? A I did, sir.

Q Now pick out the rope that you found around there? A Witness indicating.)

Q Where did you find it? A That was on the 9th floor of Dattelbaum Brothers, on the floor, that is right in back of the window.

Q You found the rope just in this way? A Yes, sir, I did.

Q This noose? A Yes, sir.

Q This form? A Yes, sir.

Q Now then what did you do after you found the rope and that piece of skin, what was the next thing you did? A Well we took the names of all the employees in the employ of Dattelbaum Brothers for the purpose of making an investigation and I canvassed 29th street there in the vicinity for anybody who might have seen somebody who was around the place at the time we cal-

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culated the crime was committed and Detective Chiquette took 28th street and I took 29th street.

THE COURT: What is the purpose of this?

MR. MARKEWICH: I am leading up to the time they found this boy on 28th street.

THE WITNESS: I didn't see the boy, it was Chiquette who discovered that witness.

Q Now do you remember the time when Sender was surrendered?

A I do, sir.

Q When was that? A About 3 P. M. on the 23rd of April. He came to the 23rd Precinct Station House in a taxicab with his counsel.

Q Mr. Jordan? A Yes, sir. He was brought up to the Captain's office, which is one flight above our office, to the 23rd Precinct Detective Bureau, for the purpose of a lineup for identification and the lineup was held --

Q Now tell us whether there was any talk had with the defendant Sender between Officer Cacassa and the defendant? A The witness Honig failed to identify Sender and we took Sender down to the 23rd Precinct Detective Bureau office again for the purpose of finger printing him and Cacassa says to him, he says, "You know you were in on that job."

Q To whom? A To the defendant Sender. The defendant Sender said, "well," he says, "I was hired to move some stuff" he said, "I was doing a moving job down in Delancey street and on

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my way up on Second avenue, in the neighborhood of 9th street, three fellows hailed me and asked me did I want to take a job and I says that is what I am in business for" so they gave me an address and I went over there.

Q He didn't give you the address at that time? A He later point out the address to us which is 127 West 28th street.

Q Who pointed out the address? A Sender.

Q He went with you? A Yes, sir; as he was going in the taxicab to the second court we brought him past 127 West 28th street and he pointed it out and he said, "That is the building" to Cassasa in the presence of his counsel.

Q Anything else that you recall? A He said there were three or four men and that when they got to 127 they had the bundles and were putting them on my truck. I said, "You kept the engine of that car running, what did you do that for". I had been informed by Honig that he had and so I asked him about it and so he said, "Well," he says, "that engine is very hard to start and I all the kept running it/while I was there. That is all."

Q Did he tell you what he did with the stuff? A Yes, sir, he said he took it to Delancey and Columbia street and dropped it on the sidewalk there. I asked him if he delivered it to any address and he said no that they just told me to drop it on the sidewalk which I did and they gave me \$10 for the job.

Q That was in front of what place he dropped it? A No, sir, he just said Columbia and Delancey street.

Q Did he tell you whether there were any men around

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there? A Yes, sir, there was two men there who received the bundles; they told him to drop it on the sidewalk.

Q Did he tell you whether he had given any receipt for that stuff or had received any receipt when he delivered it? A No, sir, he did not, Mr. Markewich, say that.

MR. JORDAN: No cross examination.

G R A N T D. C A S S A S S A, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is a Police Officer assigned to the 23rd Precinct.)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q How long have you been connected with the Department, Officer? A 24 years and 6 months.

Q Attached to any particular squad or branch? A The 23rd Precinct Detective Division.

Q Do you recall the day when the defendant^{was}/surrendered to you by Mr. Jordan his counsel? A I do.

Q Did you have any conversation with the defendant? A I did.

Q Tell us what the conversation was? A I brought the defendant down to the finger print room which is on the second floor of 138 West 30th street, the 23rd Precinct, and had him finger printed and I asked him were you in on this job and he said, "I moved the stuff."

Q What job are you talking about. Tell us as nearly as you can what you said to him and what he said to you? A I said to the defendant, "You were in on this job" and he said, "I moved the

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stuff", and I said, "how did you come to move it" and he said "I was up town." I said, "What time did you move it", and he said, "around six or something in the morning" and he had a job for a man, I believe named Phillips, down in Delancey street. He went down there and found the man didn't want him and he came back to 9th street and Second avenue and met three men and they asked him if he wanted to make \$10. What for? They said to move some stuff and he said where is the place and they told me 127 West 28th street." He says I went over there and I waited there and then some men came out, five or six men, and put something on the wagon and I drove, one of them got on the wagon with me and drove over to Delancey and Columbia Street and there put the stuff right on the sidewalk. And that was all. Then I went up town and got another job and rode around with a policeman, on a strike job, and then took a job to move up to Rock Hill, and on the way up to Rock Hill I broke down. I says why hadn't you been home since you were up there on this job? Then we went upstairs -- and I arraigned the business downstairs again at the desk and with his counsel we rode in a taxicab through 28th street and I made him show me the exact spot in which he had taken the stuff. He says that the men were in the hallway and it was in boxes -- this was all in the hallway -- and they all rushed out each man carrying one or two bundles and they threw it on the wagon and one man on the wagon told him to go ahead. That is the substance of it.

BY MR. JORDAN:

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Q Now Mr. Cassassa the defendant and myself came up to meet you by appointment at the police station? A Yes, sir.

Q And you were told that the defendant understood that you were looking for him? A Yes, sir.

Q And was coming in to surrender himself? A Yes, sir.

Q Is that right? A That was your words to me.

Q We made an appointment for the time and place to have the man come there? A Yes, sir.

Q Now you took up the investigation after the lineup as it is called? A Yes, sir.

Q To see if the witness who claimed that he saw a wagon and a man whom he could identify on the scene on the day of the crime -- you wanted him to be lined up with other men for the purpose of seeing if this young man could pick him out? A Yes, sir.

Q He went in willingly and was lined up there? A Yes, sir.

Q With other men? A Yes, sir.

Q And the young man, the witness failed to identify him utterly -- he said he wasn't in that line, didn't he? A He said he could not recognize him.

Q Didn't he say, "He aint here"? A He could not recognize him.

Q But didn't he say just as I say, Mr. Cassassa, "No he aint here"? A I don't remember that he said that; we asked him if he could recognize anyone and he said he could not.

Q As the man that he saw? A Yes, sir.

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Q Now then you and I had a conversation with regard to your taking him to the bureau of finger printing? A Yes, sir.

Q Didn't you? A Yes, sir.

Q I told you you didn't have any right to do it at all?

A Yes, sir.

Q You said it was for the purpose of determining whether he had a record or not? A Yes, sir.

Q I finally said well I shall not object to your taking him there? A Yes, sir.

Q You took him? A Yes, sir.

Q He made no protest himself? A No, sir, he did not.

Q Now after the young man had said he could not identify him Sender said that he did drive the truck, didn't he? A Yes, sir, later.

Q And I said, "There is no question" when he failed to identify him, I said, "There is no question about that"? A Later.

Q Down in whose office was that? A Captain McQueeney.

Q I said there was no question about it and Sender said he did drive the truck? A Yes, sir.

Q And got some goods? A Yes, sir.

Q Did he tell you he was an expressman? A Yes, sir, he did.

Q You found out that that was true, didn't you? A I did not investigate it.

Q There is not any question but that he has been a truckman for some time? A I don't think there is.

Q He told you that he had a job that day with a furniture

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man that he was working for some time? A Up town.

Q No down town. That he had been working there a couple of weeks? A Yes, sir.

Q With a furniture man? A He went down that morning, he had one job down in Delancey street somewhere and the man's name was Phillips.

Q What is that? A His name was Phillips.

Q That was later? A Now the other job was up town.

Q Mr. Phillips was the man who moved to Rock Hill. Now do you remember his saying that he was working for a furniture man? A During the strike, there was a strike.

Q And that on this morning he was due there at 8 o'clock? A Yes, sir.

Q And that he was there regularly at eight o'clock for the furniture man? A Yes, sir.

Q Now on this morning in question did he not tell you that as he was going to work somebody hailed him and asked him if he wanted a job? A No, sir.

Q He told you that somebody hailed him? A He said somebody hailed him.

Q He told you that he did this job and went down to the furniture place and got there about nine o'clock, didn't he? A No, sir, he said he went up town.

Q I understand that but I am talking now about what he said to you at the time I was present. Did you have another conver-

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ation with him? A I had an original conversation with him downstairs-- and the first conversation and the only conversation which I afterwards repeated to you.

Q Didn't you tell me or didn't I say to you that our agreement was "I want to be present during your investigation"? A There was --

Q Well now wasn't it the agreement that if I would permit you to take the defendant to the place for finger printing that there was to be no conversation except in that regard?

MR. MARKEWICH: Objected to.

THE COURT: Objection sustained.

MR. JORDAN: Your Honor I don't know that your Honor entirely understands. There is a question here of the good faith between the parties and I apprehend that it will bear somewhat upon the credence to be given to the witness.

THE COURT: I will allow it.

A No, sir, to an extent and I will qualify that answer.

Q Qualify it as you want to. A He said --

Q I am talking about your conversation with me. A Your conversation with me. You said that, "All right, I will let him go down" and while he was downstairs I did speak to him. That is all that was said about it.

Q Wasn't there something said about my being present during any conversation? A Yes, sir.

Q And that there was to be no conversation except when I was

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present? A Yes, sir, you did state that before but I had this conversation when you were not present.

Q Now I want to ask you, sir, if it wasn't said in my presence, when you and the defendant were in conversation -- that he did this job and he didn't get to the furniture place until nine o'clock, yes or no, now? A He went to the furniture place at nine o'clock, to a furniture place up town.

THE COURT: Strike out the last part.

Q Mr. Cassassa, we may be working at cross purposes as we don't seem to understand each other. Was the name Weil Brothers that he worked for? A He never mentioned.

Q He didn't mention it? A No, sir.

Q You don't remember that he once mentioned the name of the man that employed him? A Yes, sir, he mentioned the name of Phillips.

Q Phillips was the man who was to move to Rock Hill? A He had moved.

Q He was not the furniture man? A He was not the man --

Q You didn't understand that he was the man that he worked for right along and had been working for for a week or ten days, did you? A He didn't say it that way; he didn't say anything in regard to that; that was the only conversation I had as I have stated it.

Q Now let us see: did you make any investigation to see whether he had been working for a furniture man? A I did not.

Q Hadn't made any investigation up to the present? A No, sir,

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it is not my case.

Q Did he tell you that he had been during that strike running a truck for a furniture concern for two weeks, ten days or two weeks and that a policeman had been riding on the wagon with him?

A Yes, sir.

Q Did you investigate to see whether that was true? ANO, sir, I did not.

Q Do you know whether your associates in this case did make that investigation? A That I could not tell you.

BY MR. MARKEWICH:

Q Didn't he tell you a policeman was riding with him when he did this job? A No, sir .

Q How long after the 16th of April 1920 was the defendant surrendered? A The 23rd of April.

O S C A R W E I S S, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKEWICH:

Q Where do you live? A 3671 Broadway.

Q What is your occupation? A Garage owner.

Q You own a garage in East 108th street? A Yes, sir.

Q What number? A 426 and 28 East.

Q Do you know the defendant Sender? A Yes, sir, I do.

Q How long have you known him? A Well I just know him a couple of months since the 5th of March.

Q Since the 5th of March 1920 did he have his car in your garage? A Yes, sir.

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Q What cars did he have? A He had a Krebs truck and an Oneida.

Q Oneida? A Yes, sir.

Q Were they boxcars? A They were half of the bodies --

Q Did he have his name on it? A On the Krebs.

Q And not on the Oneida? A No, sir.

Q Now on the morning of the 15th of April, 1920 was the defendant around to your premises? A Yes, sir.

Q Were the cars removed by the defendant from your garage?
A Yes, sir.

Q Did the defendant return them to your garage on the night of the 15th? A No, sir, he did not.

Q What hour in the morning did he reach your garage? A Well he left there about between seven and eight o'clock.

BY THE COURT:

Q Alone or in company with anybody? A Well I couldn't tell you, sir..

Q With which one of the two cars did he leave the garage?
A With the Krebs.

BY MR. MARKEWICH:

Q Were both cars removed? A Yes, sir, both cars were removed, one was on the outside of the garage in 107th street; both cars were removed, one left outside of the garage and the other was taken away.

Q Were both cars taken from the garage at the same time?
A About the same time.

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Q Did you see the defendant drive off in one of these cars?

A I did not.

Q On the morning of April 15th? A No, sir, I did not.

MR. JORDAN: I move that the answer be stricken out.

THE COURT: Strike it out.

BY THE COURT:

Q Did you see the defendant arraigned and now being tried in the garage on the morning of the 15th of April? A No, sir, I did not, no, sir.

Q Now just yes or no, did you? A I did not.

Q Did you see him around your garage? A I did.

Q On the morning of April 15th? A I did, yes, sir.

Q How close to your garage did you see him? A In fact I was talking with him over some automobile tires.

Q Where did you have your talk with him on that morning?

A In the 107th street side of the garage.

Q In other words he was at the side of your garage on that morning and you talked with him by the side of your garage on that morning? A Yes, sir.

Q Is that so? A Yes, sir.

Q And at that time was there anyone with him excepting yourself? A No, sir.

Q At what hour did you have that talk? A About a quarter after eight.

Q When you had finished talking with him what did you do?

A Well, I went in the office

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Q And that office was about how far from the spot where you had talked with him? A On the 108th street side of the garage.

Q About a block away? A Yes, sir.

Q Your garage runs through from 107th to 108th street?

A Yes, sir.

Q Did you notice when you left him in which direction he went?

A He went towards First avenue as he left.

Q You saw him leave the garage? A Yes, sir.

Q Is that so? A Yes, sir.

Q You saw him walk in a westerly direction along 107th street? A Yes, sir.

Q Towards First avenue? A Yes, sir.

Q Was that the last time that you saw him that day? A Yes, sir.

Q Did you on that day, after you had your talk with the defendant, see inside of your garage either one of his two cars? A I did.

Q In what part of the garage were the cars after you had finished talking with him? A The Krebs truck was inside in the back of the garage on the 107th street side.

Q Where was the other one? A The other truck didn't come back.

Q The other truck was ^{not} at that time inside of your garage?

A No, sir.

Q Is that so? A No, sir.

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Q When had you last seen before that the other truck belonging to the defendant, the Oneida truck? A I seen it right along till it was taken out of the garage; I held the truck for storage.

Q When was that taken out? A That was taken out about two weeks afterwards.
BY THE COURT:

Q So that on this day, April 15th in the morning on the 107th street side of your garage you had a talk with the man who is now being tried? A Yes, sir.

Q You say he left the garage and walked in a westerly direction towards First Avenue? A Yes, sir.

Q You yourself went through the garage towards its 108th street side? A Yes, sir.

Q And you saw, after your talk with the defendant inside of the garage, and on the 107th street side, one of the defendant's cars? A Yes, sir; that was outside of the garage when he --

Q Outside of the garage? A Yes, sir.

Q But on the 107th street side? A Yes, sir.

Q Which car was that? A The Oneida.

Q The other car was gone? A It was -- it must have been in front of his house or his office.

THE COURT: Strike that out.

BY MR. MARKEWICH:

Q Was that car, the Krebs, with his name on it, in your garage that morning? A It was.

Q You did not see the defendant take it out? A No, sir.

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Q But you saw the defendant in your garage? A Yes, sir.

Q And had a talk with him? A Yes, sir.

Q Now was the car removed from your garage that day?

A Yes, sir.

Q Never mind by whom? A Yes, sir.

Q And from that day until this day have you seen the car?

A No, sir, I seen it once.

Q Where? A In front of his house.

Q Where? A 121st street, the Second avenue corner.

Q When was that? A That was the day after his arrest.

Q About the 24th of April? A Yes, sir, about the 24th of April in the morning.

Q These cars were never brought back to your garage?

A No, sir.

Q And you haven't seen him any more from the 15th of April?

A No, sir.

Q Or the 16th of April? A No, sir.

Q Did you on the 16th of April, 1920 receive a telephone communication from the defendant? A Yes, sir.

Q Do you know his voice? A I do.

Q Did you hear it over the telephone? A I did.

Q Did you recognize his voice? A Yes, sir.

Q Was that the voice of the defendant? A Yes, sir.

Q What did he say to you on the morning of the 16th? A He told me that he broke down with his truck on a plank road and for

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me to come after him and pull him in.

Q Did he tell you where? A No, sir, he didn't tell me the location, a Jersey plank road.

Q You couldn't send a truck out? A No, sir, I did not because I had no truck for that purpose.

Q What is that? A I didn't have a truck for that purpose.

Q Did you refer him to anybody? A I referred him to a party who stored with me and who does jobs of that kind of pulling trucks in and about half an hour after that I asked him whether this party called him up and he said no that nobody called on him.

THE COURT: Strike that out.

CROSS EXAMINATION BY MR. JORDAN:

Q What day was this you had the conversation with him?

A The 16th.

Q What was it? A The 16th.

Q What time? A About half past four in the afternoon.

Q I thought you said in the morning? A No, sir.

Q Now is that all the conversation you had with the defendant Sender in regard to this matter? A Yes, sir.

Q Now let us see he ceased to store cars in your garage on the 15th, is that right? A The 15th, no, sir.

Q What is that? A No, sir.

Q Did he have cars there after that? A He did.

Q How long? A About two weeks longer.

Q Two weeks longer? A Yes, sir.

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Q Now it was the 16th, that is the day after he took this one car away that you got a telephone message that he had broken down and wanted you to come and tow him in? A Yes, sir.

Q That was in the afternoon? A Yes, sir, that was in the afternoon.

Q That was the car that had the name on it? A Yes, sir.

Q What name was on the car? A J. Sender.

Q Did it say anything about being a truckman, give an address or anything? A Yes, sir, he had an address on it.

H A R R Y W E L C H E R, a witness called on behalf of the

People, being duly sworn, testified as follows:

(The witness states he lives at 544 Ninth Avenue, Astoria.)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q Mr. Welcher, what is your business? A Automobile repairing.

Q Connected with the Fletcher Machinery Company of 19 East 107th street? A Yes, sir.

Q That is right close to Weiss's garage where Sender stores his truck? A Yes, sir.

Q On the 15th of April 1920 did you see Sender in your place of business? A Yes, sir.

Q This defendant? A Yes, sir.

Q What was he doing there? A Pardon me?

Q What was he doing there? A He brought a truck there for repair.

Q A truck? A An Oneida truck.

Q That truck didn't have the name of Sender on it or any

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other name? A NO, sir.

Q What repairs were to be made upon it?

MR. JORDAN: I object to that as immaterial and irrelevant.

THE COURT: I do not think it is material.

MR. MARKEWICH: Except this, I want to show, if your Honor please, that he was trying to have the car fixed up, the car with no name on it but it could not be done.

THE COURT: I do not think I will receive it.

Q Did you see the Krebs truck in your place? A Yes, sir.

Q On the 15th? A Yes, sir.

Q Did the defendant bring that truck to you on that day?

A He was there around about four o'clock in that afternoon.

Q The 15th? A Yes, sir.

Q Was there a name on the Krebs truck? A Yes, sir.

Q What name. A Sender.

Q J. Sender? A Yes, sir.

Q Did the defendant have any talk with you? A Yes, sir, he did.

Q What did he say to you? A Well, he asked me if that Oneida truck was fit for a long run and I told him no. He let me listen to the Krebs truck and I told him the Krebs truck is all right.

Q Did you examine the motor on the Krebs truck? A I listened to the motor.

Q Was it the kind of a motor that you could start very

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easily? A The Krebe truck was in pretty fair condition.

Q Did the defendant tell you where he was going with the truck? A Yes, sir, he told me he had a trip to Atlantic City.

Q When? A The same night. He said he had to go to Atlantic City.

Q He said he had to go to Atlantic City the same night? A Yes, sir.

BY THE COURT:

Q This was when? A On the 15th.

Q About what hour? A About, it was a little later, I should judge around half past five or six o'clock.

Q In the afternoon? A Yes, sir.

Q As I understand you he asked you whether that truck was good for a long trip, whether it would stand a trip to Atlantic City? A Yes, sir.

Q And asked you to examine the motor and you did and you told him it was? A Yes, sir.

Q You have not seen the defendant after that? A No, sir, never did, not after that.

CROSS EXAMINATION BY MR. JORDAN:

Q Now let us see, you are positive about that date, are you? A Yes, sir, pardon me, I am positive about it.

Q Did you make any charge on that day against him? A Yes, sir, I did.

Q What was the charge for? A The charge was for repairing the Oneida truck.

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Q When did you repair the Onside truck? A That same day on the 15th.

Q Was it taken out on the 15th? A It was left in charge of a chauffeur.

Q I say was it taken out from your place of business on the 15th? A Yes, sir.

Q Who took it out? A A chauffeur.

Q Do you know what time he took it out? A The same night.

Q Do you know about what time it was? A After Mr. Sender left, about seven o'clock.

Q Now did Mr. Sender tell you that he had some moving to do to Rock Hill? A No, sir.

Q He didn't tell you about that? A No, sir.

Q Did you examine the engine to see if it was easy to start? A Well I listened to the engine and the engine was running.

Q It was running? A Yes, sir.

Q Did you ever try to start the engine of the truck? A Which truck are you talking about?

Q The one that had the name on? A The one that had the name on; I never did try to start it.

Q You don't know that some trucks ^{start} easier than others?

A I do.

MR. MARKEWICH: The People rest.

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MR. JORDAN: The People having rested I ask your Honor to direct a verdict of not guilty in this case.

THE COURT: It is a case for the jury. It is a case in which a defense should be put in.

MR. JORDAN: It seems to me that under the law your Honor has the duty to perform now instead of the jury and that your Honor can pass that responsibility on.

THE COURT: No. I am discharging my duty.

MR. JORDAN: I know your Honor is.

THE COURT: By denying your motion.

MR. JORDAN: Well your honor has not heard the reasons. I do think that your Honor ought to hear them and I think your Honor ought to grant this motion instead of denying it. I think, if your Honor please, that where the People present evidence of this character if a verdict should be rendered, your Honor, in all confidence, would be obliged to set it aside.

THE COURT: That is where I do not agree with you.

MR. JORDAN: I think your Honor will when we have finished. Now it is established that the defendant is a truckman. There is not one single thing that has been said by any witness which throws a suspicion even upon his conduct as a truckman.

THE COURT: Mr. Jordan you don't want me to make any comment on the evidence. I don't want to make any comment on the evidence at this time.

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MR. JORDAN: I don't say that your Honor should.

THE COURT: I want to hear you.

MR. JORDAN: I want your Honor to hear the application and while perhaps it may not be proper for your Honor to express any views with regard to it yet if after the argument of counsel your Honor should feel that it is your duty to deny the motion all right. But I desire to place my grounds upon the record.

THE COURT: We are agreed as to the principle to be applied. In other words the principle is one that is thoroughly understood and known. The only question is whether the evidence presents such a condition as ought to leave me, under Section 410 of the Code of Criminal Procedure, to advise the jury to acquit or whether the case is one that calls for an explanation on the part of the defendant.

MR. JORDAN: Now I submit that any explanation is unnecessary. Here is a case where we are found in possession of property. How is he found in possession? The defendant admits that the first time that anyone speaks to him that he was hired as a truckman and carried goods from a certain point. That thing has been explained. He has done everything that any man could do and he has made an explanation in regard to it. For instance if I were found with something in my possession that has been stolen must it be said that

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the only place to make the explanation is after an indictment and before a petit jury. It seems to me that that cannot be the rule. If your Honor thinks so then any honest man in this country who might be possessed of property that is stolen property would be called upon for such an explanation. Here we have goods in our possession under circumstances which are explained by the business in which we are engaged. For instance, if a man is a hotelkeeper and a man brings a bag into the hotel and it is taken by a porter to be carried up to a room in the regular course of business cannot the hotel proprietor explain to those who come and make inquiry and avoid the trial of an indictment. In other words must a man who innocently comes into possession of stolen property explain it when he has an opportunity or must he, in order to be vindicated, explain it to a jury of twelve men after indictment?

THE COURT: Now the answer to that is no.

MR. JORDAN: Well now I say that if that is true then there is no difference here in any of the essential elements. The young man says that there was a door thrown open and that the machine was kept running. Those are the two circumstances here.

THE COURT: And one other.

MR. JORDAN: I would like to have it, your Honor.

THE COURT: The placing of the packages on the sidewalk at no ascertainable address.

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MR. JORDAN: Now if your Honor please the detectives have testified that he told them the place where he took them and that the party --

THE COURT: No there are four corners there.

MR. JORDAN: Perhaps I was so familiar with this one matter that I neglected to inquire particularly into that.

THE COURT: He didn't tell them exactly where he put them.

MR. JORDAN: But he offered to show them.

THE COURT: I think on the evidence as it stands I must let it go to the jury. I must hear the evidence for the defense and you may then renew your motion.

MR. JORDAN: Exception.

J A C O B S E N D E R, the defendant being duly sworn in his own behalf, testified as follows:

(The witness states he lives at 317 East 121st street.)

DIRECT EXAMINATION BY MR. JORDAN:

Q Now, Mr. Sender, how old are you? A Forty years.

Q Your business? A Trucking.

Q Where is your place of business? A 317 East 121st street.

Q In the City of New York? A Yes, sir.

Q How often have you been engaged in the trucking business?

A I am trucking 15 or 16 years, not in business, I was working for bosses and in business for myself five years.

Q Now how many trucks do you have? A I have one truck.

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Q What is that? A Four horses and two wagons and since ten months ago I sold the horses and wagons and I bought that Krebs truck, a second-handed truck and I paid \$400 and I got to pay that much, \$130 in notes.

Q Now on the morning of the 16th day of April, isn't that it, what were you intending to do? A I was intending to move, a man has to go to Jersey, 128th street, take a load out between park and Madison avenue out to Jersey.

Q For whom? A For people I couldn't tell you, the chauffeur took the load out. You know I never write down the address; I never write down the address. There comes a party to me and I write the address for the house and send the chauffeur and he knows the names where he goes.

Q Have you been doing any work for a furniture concern?
A Yes, sir, I have been doing work for a furniture concern Weil Brothers with my truck. I came every day at half past eight, a strike on, with a cop was along with me, for two weeks every day a different cop.

Q Now what did you do on the morning of April 16th? A I went down town to move Mr. Phillips to Rock Hill. I had two jobs, first I got one job 64th street to Atlantic City and I couldn't do it, I was figuring it was a cheap job and I have more money to go to Rock Hill.

BY THE COURT:

Q What time did you leave your house? A I left the garage

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about six o'clock and I came up to my house and I got the burlap out, and the rigging for pianos to hoist up and I put everything on the machine and I went down town.

Q On the morning of the 16th of April about what time did you leave your own house for the first time on that day? A That day it was about between five and six o'clock.

Q Where did you live on that day? A 317 East 181st street; that is where I live.

Q That is between what avenues? A First and Second avenues.

Q Did you leave your house alone or did somebody go out of the house with you? A Nobody went along with me.

Q When you left your house between five and six o'clock on the morning of that day where did you go? A I went right to the garage and I came into the garage --

Q Where is the garage? A 108th street.

Q Between what avenues? A Near First and the river.

Q About what time did you get to the garage? A Must be about half past five.

Q What did you do after you got there? A When I came in there I could not get the car it was a couple of cars in the front. I was supposed to go out -- I left word in the garage in the night time I had to go out in the morning and I can't leave no word in the garage and the car was blocked up in the back and the man in the night time he was the man that stored the car and he won't recognize the car and I can't start the car on

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to go out. I will have to push the other cars out. I started to go out and I couldn't start it and there came in another fellow that wanted to go out at half past five to go in the market and he was coming out and he shoved the cars out altogether and started the truck then out, shoved them out to the street, and after this fellow went out first I went after him and one fellow went in the market with his car and I shoved out two cars in the street, one in the side and one in the street.

Q Now after that was done what did you do next? A I went in the car to my house and took the ropes out and the piano hoisting.

Q In other words you got into your car and you went with it in front of your house? A Yes, sir.

Q Number 317 East 121st street? A Yes, sir.

Q Why did you go from the garage to your house? A I got the block and fall to hoist pianos, it cost \$110 of material which is in the car. And when I got something in the daytime to work in the morning or the night time I leave it in my office and somebody take twenty-five or thirty dollars of property and when I come in the morning to take the car out --

Q You went to your house for the purpose of getting something? A Yes, sir.

Q A hoisting device? A Yes, sir.

Q What was that something that you got? A A block and a fall, the hoisting thing.

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Q Whereabouts in your house? A In the basement.

Q Was that? A In the basement.

Q What did you do with it? A Put it on the truck.

Q After you put it on the truck what did you do? A I went down town.

Q Along what avenue? A I went up Second avenue.

Q You went along 121st street? A Yes, sir.

Q Until you got to Second avenue? A Yes, sir.

Q Is that so? A Yes, sir.

Q Did you turn down Second avenue? A I don't turn, I went right down to Mr. Phillips.

Q Now wait a moment. Go ahead. You went down Second avenue. Went down town on your car? A Yes, sir.

Q Is that so? A Yes, sir.

Q What do you tell me, straight down town? A Yes, sir, straight down town, Second avenue down town.

Q When you left your house? A I left my house.

Q When you left your house and got on your car was there anybody else on the car except you? A No, sir, nobody except me.

Q Was there anything else in the car except the tackle or whatever you use for hoisting planes? A There was a lot of rags and burlap because I cover up the furniture.

Q To put on the furniture? A Yes, sir.

Q When you turned down Second avenue on your car whereabouts did you intend to go? A I did intend to go to Broome Street

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to move a man from Broome near Christie. And I intended to move him to Rock Hill.

Q You were going to the house of a man who lived on Broome street near Christie street? A Yes, sir.

Q To move him from that house to some place in Rock Hill? A Yes, sir.

Q Whereabouts is Rock Hill? A It is seven miles this side of Monticello.

Q To what house were you going on Broome street, whose house? A It is right across, I couldn't tell you what number, I can't really tell what number, I took him in the winter already, I took out in the winter too goods. I went out in the middle of winter, that must be five or four months ago, I took a load out to another house.

Q What is the name of the man? A The man is Mr. Phillips.

Q What is his first name? A I don't know his first name, I know his name is Phillips.

Q On what floor does he live? A The second floor.

Q About how long have you known him? A About I know him, he had a saloon and I came in all the time there.

Q About how long had you known him? A I know him about a year or two years.

Q Whereabouts was the saloon? A He has a saloon.

Q Where was his saloon? A Broome near Foreythe.

Q Did you stop anywhere after you had turned your machine

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into Second avenue at 121st street until you got to the house of Mr. Phillips? A No, sir, stopped no place in 121st street.

Q Where did you stop? A Well I went to the job where it is at.

Q You were coming along on your truck down Second avenue?

A Yes, sir.

Q Is that so? A Yes, sir.

Q You had a job to do? A Yes, sir.

Q Which side were you driving down on? A The righthand side.

Q Did you have anybody with you while you were going down the avenue? A No, sir.

Q To go to Phillips's house. Did you meet anybody. You say somebody spoke to you? A Yes, sir.

Q What did they say? A They asked me--

Q What is the first thing you heard that person say? A That man wants to give me a job. He said want to do a job-- I got a job he said.

Q Listen to me. You say one man said do you want a job?

A Yes, sir.

Q Now wait a moment. A Yes, sir.

Q You said a man came up to you? A When I was on the way the man was standing and he came up; he came up there and he said --

Q Now I want to find out where he came from. Somebody spoke to you? A Yes, sir.

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Q What did he say? A They said -- I was going with the car and a fellow stopped me and he said you want to do a job.

Q How did he stop you? A He put up his hands like this and I stopped and he said, "You want to do a job" and I said, "what job is it" and he says, "I got some stuff to take away from 28th street and it wants to go over to Delancey street." I said I don't got time, I got to go down town, I have to go down to do this work and he said, "It wouldn't take long, about two or three hours" and I said all right and he said it was in 28th street and I said near where and he said near 6th and 7th avenue.

Q Where was this man when he stopped you? A He was at 9th street and second avenue.

Q On the sidewalk? A Yea, sir.

Q Or in the street? A On the sidewalk, and he put up his hands.

Q Was he alone or with anybody? A Alone and there came another man, when he spoke to me another man came along.

Q Tell us how they looked, what kind of a looking man?
A One fellow was a short fellow, a young fellow, and one fellow was a skinny fellow, a short fellow, and one fellow was a little my shape, a little fat, 200 pounds he weighed.

Q How were they dressed? A One fellow was with a light suit and one a black suit.

Q What kind of a light suit? A A light suit; I don't

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remember that, just a light suit, one big fellow, a tall fellow.

Q Which one of the men was it that spoke to you? A That big fat fellow.

Q The larger of the two? A No, sir, the larger of the two, the skinny fellow, I know the tall fellow was a little fat and he came over to me and he was talking to me and both were coming back with the other fellow.

Q Now tell me again which one of the two it was that held up his hand and spoke to you? A That was the first time, yes, sir.

Q Which one of the two was it that spoke to you at 9th street and second avenue, raised his hand and spoke to you and caused you to stop your car? A That big fellow, he weighs about 200 or 190, a big fellow.

BY MR. JORDAN:

Q Now what else did they say after that? A He said -- I went over there, sitting with me on the seat, I went over through 9th street and as I pulled over to 10th street and right into 10th street.

BY THE COURT:

Q I wish you would think very carefully and tell us all that was said to you by either of these two men before you agreed to do what they asked you. Now tell us. You understand that. A Yes, sir.

Q Tell us carefully what they said, either of these men said before you told either of them that you would do what they asked you to. A He asked me, stoppped me with the hand, I was going

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with the truck, I stopped off and he said you want to do a job and I said yes and he told me he had a couple of bundles to take over from 28th street and I said how much will you pay me and he said it is worth ten or twelve dollars and I said all right and he said I will give you ten. And this fellow spoke to me, another fellow, he came along and I said how much do you pay and he said ten. Both men with me on the seat and I said where is it and they said 28th street near 6th or 7th avenue. I pulled into 9th street and turned into 10th street and go down to 7th avenue and 28th street, one side place and you can't come in on the other side and I came on 7th avenue and went 7th avenue and up 28th street and I came over and he says here is the bundles. I came in the place and put one bundle in the machine and after that the other fellows put the other bundles in the machine and as soon as they brought it down, ~~the~~ two fellows went over with me and two fellows went away and two fellows were standing in front of the house and I put down the two bundles and the two fellows went up with me.

Q You went away? A I came over in Delancey street near Columbia and I said where am I going to put them and they said on the sidewalk right here by this shop and I go and put them on the sidewalk and he gives me ^a ten dollar bill so they were walking along to First avenue again and I went to the garage where I have another job supposed to go to Jersey, 128th street to take a load to Jersey and I stopped in the garage and I said to the

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man, Mr. Weiss, is my car in the garage and he told me we couldn't stop there in 108th street and I pulled into 107th street and went in for my car and I said is my car here and my machine went out at eight o'clock in the morning, eight o'clock.

BY THE COURT:

Q About what time of day was it when, as you say, the packages were taken out of your car and put on the sidewalk at Columbia and Delancey street? A About half past seven or quarter of eight.

Q Why didn't you then go with your car to the house of Mr. Phillips at Broome street near Christie? A I went to the house again in the night time, four o'clock or half past four but I had another job for Mr. Weil Brothers and another job was supposed to go to Atlantic City and I gave it away to 116th moving man near Third avenue and he gave me \$10 commission.

Q Why did you not go from Delancey and Columbia street in that car that you were in to Mr. Phillips' house at Broome street near Christie? A I went to pull right over back into First avenue for Mr. Phillips and I was figuring that I could do his job after doing the strike job and I will get there at four o'clock. I was waiting until half past four, that was the time, over there and that was a long moving job, some barrels to take out and in about a half an hour some barrels were taken out and I go over in the night time and come up the same morning there, it wasn't necessary to come around there then.

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BY THE COURT:

Q Now listen to me. You left your house in the morning intending to go Phillips' home on Broome street near Caristie street? A Yes, sir, near Forsythe.

Q In order to take something that he wanted you to take to Rock Hill? A Yes, sir.

Q If this man had not come to you and spoken to you on Second avenue and 9th street you would have kept right on to Phillips' house on Broome street, isn't that so? A I was--

Q You were going there? A I was like --

Q Now after you had been discharged by these people and had left the premises on Delancey street near Columbia street why didn't you go in your car right away to Phillips' house on Broome street? A It was too late to go to his house and I think I will be over about six o'clock and I said when I would not be over at six o'clock I will be there in the night time. He gave me notice a month before and I took four months ago a load there and he said any time you have a chance take out this load, next month, he was going to move there the furniture altogether, I moved there the furniture and I was looking up somebody else to move with the furniture and he only took out some barrels of stuff. I was supposed to work for them and it may be \$140 a week and I said I will go home then to take a job at Weil Brothers and maybe he won't need me for the whole day, riding around the city, about 12 o'clock, between 12 and 1 o'clock,

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and taking a load, and about one o'clock I took a load out to East New York and I came back and I stopped in Allen street near Rivington street and I said to the officer on the seat with me, "I have in Broome street I got a job for Rock Hill maybe I go tonight or tomorrow and the cop says, "Wait for me here" and I thought I might as well wait here about fifteen minutes and the cop was sitting on the seat and I went over there and I said to Phillips, "You couldn't move out tomorrow" and he says "all right, come in the morning" and I said I got a job and I couldn't come in the morning.

Q What time of day was it you saw Phillips? A It was about four o'clock.

Q You saw Phillips on April 16th? A Yes, sir.

Q At four o'clock in the afternoon? A Yes, sir.

Q Whereabouts? A It was in Broome street corner of Foraythe street.

Q In his house? A No, sir, not in his house; I seen him on the corner.

BY MR. JORDAN:

Q Now you had a talk with Phillips? A Yes, sir.

Q Where did you go? A I went over to the 42nd street ferry.

Q Where? A The 42nd street ferry.

Q And where from there? A I went right up going to Hackensack.

Q Go to Hackensack? A Yes, sir.

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Q Did anything happen on the road? A When I got up on top of the hill I broke down the machine and I telephoned to Weiss that my car broke, there was no garage out there and can't you send me out a car to pull me home or pull me up some place and he says no car here. He says, "I can't help you." All right I left the receiver go and after I was standing there a couple of hours a fellow came to pull me up and as soon as he pulled me up for \$2.

Q You went on? A Yes, sir, I went on and before I got to Rock Hill I broke down again that was near Phillips' house and I took the load of stuff off and a fellow took me with his team of horses to his place.

Q Over to Phillips' place? A Yes, sir.

Q What is Phillips' place there? A He bought a hotel.

BY THE COURT:

Q How much was he to pay you? A \$80.

Q How much? A \$80.

Q For what you did that day? A Yes, sir.

Q For taking out his stuff? A Yes, sir.

Q How far is Rock Hill, do you know? A About ninety miles.

BY MR. JORDAN:

Q Do you know about what time you got to Mr. Phillips' place? A It was between four and half past four o'clock.

Q Half past four? A Yes, sir.

Q You mean when you left here? A No, sir, it was six

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or seven o'clock at night.

Q What happened to your truck? A My truck was broken down.

Q How long was your truck over there at or near Rock Hill?

A The next Sunday.

BY THE COURT:

Q When was this next Sunday? A A week.

Q What day of the week was April 16th? A April 16th it was on a Friday -- between six and seven o'clock.

Q The truck was there until the next Sunday? A Yes, sir.

Q Six o'clock the day after? A The day after.

Q Did you take the truck from there? A A week from Saturday is the next --

Q Did you get it fixed so that you could drive it back then? A Yes, sir.

Q Who fixed it? A I bought some parts and fixed it with a fellow there.

Q With another fellow out there? A Yes, sir.

BY MR. JORDAN:

Q Is Rock Hill a small or large place? A It is not a big place, it is only a little place.

Q No garages there? A No, sir, no garages there.

Q Now, Mr. Sender, at the time that you took this load for these parties, did you know that a burglary had been committed?

A No, sir; I never knew it.

Q Did you have any knowledge or suspicion that these goods were stolen that you were taking? A No, sir, I aint got no

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suspicion, a lot of people when they pass sometimes and see a man, these people stop me off to take a load. I went out four weeks ago and I passed Broadway --

Q If you had known that there had just been a burglary there and that these were stolen goods would you have taken them? A When stolen goods I would never do it.

Q You don't know who stole the goods or anything about them, do you? A No, sir.

Q Have you any idea who committed the burglary? A I could not tell you that.

BY THE COURT:

Q These two men who got on the car with you at 9th street and Second avenue and went on the car with you to this place on 28th street -- A Yes, sir.

Q When you drove away from that place in the car were either of these men on the car? A Two men was in the same car.

Q Did they remain in the car with you? A They jumped in the back.

Q They jumped in behind? A Yes, sir.

Q How long did they stay on the car? A On the car till at Delancey street when I delivered the stuff.

Q Are they the two men that you left the stuff with on Delancey street? A Them two men that I left went along with me to Delancey street and the other two men I didn't see them any more, I only seen them in 28th street with the bundles. The two

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